


In the Matter of the Protest by ) Case No. 97-2183  
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 )  
 ) DECISION

Case No. 97-2183

## DECISION

IT IS SO ORDERED: December 29, 1997

  
K. WILLIAM CURTIS  
Chief Counsel  
Department of Personnel  
Administration

BEFORE THE DEPARTMENT OF PERSONNEL ADMINISTRATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by

[REDACTED]

Case No. 97-2183

From involuntary transfer from the  
Transportation Unit to the North  
Kern State Prison with the  
Department of Corrections at  
Delano

PROPOSED DECISION

This matter came on regularly for hearing before  
Byron Berry, Administrative Law Judge, State Personnel  
Board, on July 9, 1997, at Delano, California.

Appellant, [REDACTED], was present and was  
represented by Joel Levinson, Supervising Legal  
Counsel, California Correctional Peace Officers  
Association.

Respondent was represented by Roy J. Chastain,  
Labor Relations Counsel, Department of Personnel  
Administration.

Evidence having been received and duly  
considered, the Administrative Law Judge makes the  
following findings of fact and Proposed Decision:

I

The above appeal from involuntary transfer effective April 7, 1997, complies with the Department of Personnel Administration (DPA) Rules.

II

Appellant commenced his employment as a Correctional Officer with the California Department of Corrections (CDC) on April 1, 1975. He has worked at the Tehachapi State Prison, the Wasco State Prison, and the North Kern State Prison (NKSP). He received a 15 working days suspension for the conduct indicated in this appeal from involuntary transfer. That matter is still pending before the State Personnel Board.

III

He received an involuntary transfer because he refused to obey a direct order from his supervisor. Management decided to transfer appellant to the NKSP so that he could receive closer supervision. The transfer was initiated after a careful review and consideration of the incident.

IV

On May 22, 1996, while assigned to the CDC Transportation Unit, appellant was directed to transport inmate [REDACTED], [REDACTED] from the Wasco State Prison to the Community Correctional Facility (CCF) at Shafter, California. After noticing TB (tuberculosis) Code 34 on the transfer document, appellant contacted his supervisor, Sergeant [REDACTED] and told him that he did not see the need to transport inmate [REDACTED] to the Shafter CCF, because the staff would refuse to accept him. After listening to appellant's concerns, Sergeant [REDACTED] gave him a direct order to transport inmate [REDACTED] to the CCF in Shafter. ..

Appellant failed to transport Inmate [REDACTED] as directed by his supervisor. He ignored Sergeant [REDACTED] order and told him, "You're answer is unacceptable, so I am handling it myself." Appellant subsequently hung the phone up. As a result of appellant's failure to follow instructions, a separate transport team had to be assembled to transport inmate [REDACTED] to the Shafter CCF. This resulted in additional cost to the state.

V

Inmate [REDACTED] was listed as a TB Code 34. Appellant didn't understand that designation. He was concerned that the inmate could be infectious. Appellant contacted the Shafter CCF and spoke to nurse [REDACTED] to see if CCF would accept the inmate. She told him that they would not accept him. Nurse [REDACTED] stated in a memorandum dated May 23, 1996, that after talking to appellant, she discussed the matter with Chief [REDACTED], and they decided that if they had a choice, they did not want this inmate at their facility. She phoned appellant and informed him that they did not want the inmate to be transported to their facility. She also indicated in the memorandum that she did not realize that her telling appellant that they didn't want the inmate at their facility was sufficient criteria for the inmate to be dropped from the transportation roster.

VI

When appellant did not agree with Sergeant [REDACTED] instructions, he should have contacted Sergeant [REDACTED] supervisor or the medical staff at

[REDACTED] continued)

Wasco that gave the inmate the TB Code 34 designation to seek further clarification, instead of refusing to obey Sergeant [REDACTED] instructions.

Sergeant [REDACTED] knew that the inmate was not infectious because he understood the TB Code 34 designation. Appellant had a legitimate concern about the possibility of transporting an infectious inmate that he was not equipped to handle. When appellant failed to transport the inmate as directed, he refused a direct order from Sergeant [REDACTED]

He was subsequently transferred to the NKSP so that he would be placed in a position that would require a greater level of supervision, which was not available in the Transportation Unit. Appellant was advised in his Official Notification of Reassignment that his transfer should not be considered adverse in nature, but was necessary to enhance his job performance and provide him with the necessary level of supervision.

\* \* \* \* \*

PURSUANT TO THE FOREGOING FINDINGS OF FACT, THE  
ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING  
DETERMINATION OF ISSUES:

Government Code section 19994.1 provides that an  
appointing power may transfer any employee under its  
jurisdiction to another position in the same class, or  
from one location to another in the same position or  
in a different position as specified in Government  
Code section 19050.5. The Department transferred  
appellant in compliance with Government Code section  
19994.1 to address the security and operational needs  
of the Department. The transfer was initiated after a  
careful review and consideration of the incident,  
which resulted in appellant receiving a 15 working  
days suspension. Appellant has failed to prove that  
the Department did not comply with Government Code  
section 19994.1.

\* \* \* \* \*

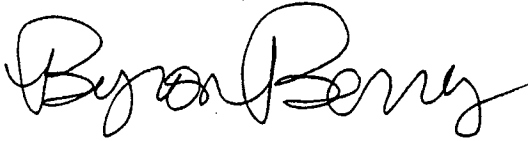
WHEREFORE IT IS DETERMINED that the appeal taken  
by [REDACTED] from involuntary transfer effective  
April 7, 1997 is hereby denied.

\* \* \* \* \*

( [REDACTED] continued)

I hereby certify that the foregoing constitutes  
my Proposed Decision in the above-entitled matter and  
I recommend its adoption by the Department of  
Personnel Administration as its decision in the case.

DATED: October 8, 1997

A handwritten signature in cursive script, reading "Byron Berry". The signature is written in dark ink and is positioned above a horizontal line.

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Byron Berry  
Administrative Law Judge  
State Personnel Board